

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 06-cv-01728-REB-MJW

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WATER SUPPLY AND STORAGE COMPANY, *et al.*,

Defendants.

STIPULATION AND ORDER OF DISMISSAL

On August 31, 2006, the United States filed a Verified Complaint against Defendants Water Supply and Storage Company ("WSSC") and the Grand River Ditch (the "Ditch") (collectively "Defendants") under the Park System Resource Protection Act, 16 U.S.C. § 191j et seq., and a 1907 Stipulation between the United States and WSSC, seeking response costs and damages resulting from the May 30, 2003, breach of the Grand River Ditch (hereinafter the "Breach").

The United States and Defendants (collectively "the Parties") agree that settlement of this action without further litigation is in the public interest and that entry of this Stipulation and Order is the most appropriate means of resolving this action.

NOW THEREFORE, before the taking of any testimony, without trial of any issue of fact or law, and upon the consent and agreement of the parties to this Stipulation and Order, it is hereby agreed and stipulated as follows:

1. WSSC is a mutual ditch company that does business in Colorado, and which at all relevant times owned and operated the Ditch.

2. The Court has jurisdiction over the subject matter and over the Parties pursuant to 16 U.S.C. § 1911-2 and 28 U.S.C. §§ 1331 and 1345. Venue is proper in the District of Colorado pursuant to 28 U.S.C. §§ 1391 and 1395.

3. The Parties agree that this settlement constitutes a compromise of a disputed claim, and nothing herein shall be construed as an admission by Defendants as to any of the allegations contained in the Verified Complaint.

4. Defendants shall pay the United States nine million dollars (\$9,000,000) in two installments. The first installment, in the amount of six million dollars (\$6,000,000), shall be paid no later than thirty (30) days after entry of this Stipulation and Order. The second installment, in the amount of three million dollars (\$3,000,000), shall be paid no later than twenty-four (24) months after entry of this Stipulation and Order. No interest shall accrue on any payments timely made under this Stipulation and Order.

5. If Defendants fail to make timely payments pursuant to Paragraph 4 above, Defendants shall pay a stipulated penalty of one thousand dollars (\$1,000) for each day that Defendants' payment is delayed beyond the due date.

6. Defendants waive any and all objections to the collection of any unpaid amount due under this Stipulation and Order in accordance with Rule 69 of the Federal Rules of Civil Procedure and the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308.

7. In consideration of the payments that will be made by Defendants under Paragraph 4, this Stipulation and Order resolves and fully and finally releases

Defendants from and for any and all civil claims asserted or unasserted by the National Park Service against Defendants and WSSC's present and former officers, directors, shareholders and employees related to the Breach.

8. All payments due under this Stipulation and Order shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with instructions provided to Defendants by the United States following entry of this Stipulation and Order. At the time of payment, Defendants shall send notice that payment has been made to:

Stephen Taylor
Assistant United States Attorney
1225 Seventeenth Street, Suite 700
Denver, Colorado 80202

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

Karen Battle
Environmental Quality Division
National Park Service
U.S. Department of Interior
1201 Oak Ridge Drive
Fort Collins, CO 80525

9. Each party shall bear its own costs, expenses and attorney's fees in this action.

10. This Court retains jurisdiction to enforce this Stipulation and Order. Except for such retained jurisdiction, the Verified Complaint shall be dismissed, with prejudice.

11. WSSC shall have no responsibility or liability for the success or failure of the restoration of the park system resources damaged by the Breach. The United States shall be solely responsible for restoration activities that it performs related to the Breach.

12. Because the Parties have a mutual interest in the restoration and stabilization of the slope below the Grand River Ditch at the location of the May 30, 2003, breach (designated as "Zone 1A" in this litigation and hereinafter referred to as "Zone 1A"), the parties have agreed that they will cooperate in any formulation and design of a suitable restoration and stabilization plan in Zone 1A.

13. The undersigned representatives of the U.S. Department of Justice and WSSC and the Ditch certify that they are fully authorized to enter into the terms and conditions of this Stipulation and Order and to execute and legally bind the United States and Defendants, respectively, to it.

ORDER

As stipulated to and agreed by the parties, IT IS SO ORDERED AND ADJUDGED, AND THIS MATTER IS DISMISSED, WITH PREJUDICE, EACH PARTY TO BEAR ITS OWN COSTS AND FEES.

Dated: _____

ROBERT E. BLACKBURN
United States District Judge

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

RONALD J. TENPAS
Assistant Attorney General
U.S. Department of Justice

Dated: 5/4/08

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FOR THE NATIONAL PARK SERVICE:

5/5/08
DATE

VAUGHN BAKER
National Park Service
Superintendent, Rocky Mountain National Park

FOR DEFENDANTS WSSC AND THE GRAND RIVER DITCH:

DATE: 5/5/08

DENNIS HARMON
General Manager
Water Supply and Storage Company

DATE: 5/5/08

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CERTIFICATE OF SERVICE (CM/ECF)

I certify that on May 5, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following email addresses:

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